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The following index and digest contain the legal cases which have appeared in THE BANKING LAW JOURNAL during 1957. The entire arrangement, including the number of sections follows the plan of the fifth edition of the BANKING LAW JOURNAL DIGEST. The DIGEST, with Cumulative Supplement to Fifth Edition, contains the digest of more than 10,000 banking decisions which have been published in THE BANKING LAW JOURNAL from the time of its establishment in 1889 down to December, 1957.

ACCEPTANCES

§ 1. Definition of acceptance.

The word "acceptance" in Section 220, U.S. Code, Title 18, means the assent of the drawee to the order of the drawer and not the mere receiving and paying of checks. Schooler v. United States, United States Court of Appeals, 231 F.2d 560. 74 B.L.J. 403.

§ 11. Retention of bill as acceptance.

Retention for more than 24 hours by a drawee bank of a check forwarded to it for collection and payment does not render the bank liable as an acceptor under N.I.L. Sec. 137. Urwiller v. Platte Valley State Bank, Nebraska, 83 N.W.2d 88. 74 B.L.J. 1062.

AGENTS

§ 56. Agent's authority.

Where a power of attorney in favor of a depositor's agent gave the agent authority to "do all lawful acts requisite for effecting these premises" a bank, acting in accordance with this power was protected in loaning money to the agent even though the agent later used the funds for his own purposes. Crosby v. Loudoun National Bank of Leesburg, Crosby v. Peoples National Bank of Leesburg, United States Court of Appeals, 235 F.2d 540. 74 B.L.J. 488.

ALTERED PAPER

§ 67. Alteraton as to parties.

A bank was not liable to a corporate depositor for aiding one of the corporation's officers to carry out a fraudulent scheme involving the alteration of checks where the alteration was almost completely obscured by a perforating machine and where circumstances were not so suspicious as to have put the bank on inquiry. National Nu Grape Co. v. Citizens & Southern National Bank, Georgia, 93 S.E.2d 381. 74 B.L.J. 496.

ASSIGNMENTS

§ 94.5. Assignment of accounts receivable.

Under Article 260-1, Texas statutes, prior to its amendment in 1955, a Notice of Assignment of Accounts Receivable could not protect accounts which were not in existence at the time the Notice was executed. Republic National Bank of Dallas v. Vial, United States Court of Appeals, 232 F.2d 785. 74 B.L.J. 229.

§ 95. Assignment of contract.

Where a contractor furnished to the government a performance bond containing an assignment to the surety of the contractor's rights under the government contract and a bank later took an assignment of the same contract without knowledge of the prior assignment, the surety did not have first claim on the contract proceeds because its assignment was not made in accordance with the Assignment of Claims Act and because the bank had no notice of the surety's assignment. Bank of Arizona v. National Surety Corp., United States Court of Appeals, 237 F.2d 90. 74 B.L.J. 409.

ATTACHMENT, GARNISHMENT AND EXECUTION

§ 99. Property subject to attachment.

Funds of a check cashing corporation held in an account in one bank were not subject to attachment by another bank which held checks of the corporation on which payment had been stopped because the funds qualified as trust funds under Section 12300.3 of California statutes. Bank of America National Trust & Savings Association v. Bowden, Trustee in Bankruptcy of Cole's Check Service, California, 300 P.3d 10. 74 B.L.J. 135.

BANKING

§ 119. State control of banking business.

Although a court in South Dakota cannot on appeal consider the determinations of the State Banking Commission, it can consider on mandamus proceedings whether or not the Commission abused its discretion. In this case the court ruled the Commission had not abused its discretion in denying an application for a new bank since the facts indicated the community could not support another bank. Wall v. Fenner, Superintendent of Banks, South Dakota, 76 N.W.2d 722. 74 B.L.J. 218.

The Pennsylvania Banking Code is not to be construed as distinguishing communities only by reference to township or county lines and therefore a branch bank may be relocated in another township within the same county so long as other requirements of community needs are met. Upper Darby National Bank v. Myers, Pennsylvania, 124 A.2d 116. 74 B.L.J. 31.

The word "village" in a state banking statute was not to be given the limited definition which would include only an incorporated municipality; rather it was to be construed in the general sense of the word and consequently a bank could establish a branch in an unincorporated village. Wyandotte Savings Bank and National Bank of Wyandotte v. Eveland, as Commissioner, and Security Bank, Michigan, 78 N.W.2d 612. 74 B.L.J. 325.

Service of process on the manager of a foreign banking corporation in New York conferred jurisdiction on the court because under state law the bank was doing business in the state on a continuing and permanent basis. Varga v. Credit Swisse, 155 N.Y.S.2d 655. 74 B.L.J. 492.

The Illinois Community Currency Exchange Act which requires a license, fees and insurance except for certain specified organizations, is discriminatory and therefore violates the 14th Amendment. Dowd v. Hodge, Illinois, 146 F.Supp. 887. 74 B.L.J. 865.

Under a 1955 Pennsylvania statute the Department of Banking was empowered to disapprove a merger of two banks only if the merger did not meet certain specific standards and consequently the Department was not to consider the need for banking facilities as part of the test to see if a merger was being made for legitimate purposes. Dauphin Deposit Trust Co. v. Myers, Pa., 130 A.2d 686. 74 B.L.J. 953.

§ 120. Constitutionality of regulatory laws.

The section of the Ohio Retail Installment Sales Act that limits finance charges of retail sellers of installment contracts to two percent is constitutional and is a valid exercise of the state's police power. Teegarden v. Foley, Ohio Court of Appeals, 73 B.L.J. 944. Affirmed, Ohio Supreme Court, 74 B.L.J. 990.

§ 127. Practicing law.

Giving tax information to customers, preparing and filing probate papers, filing tax returns and apearing for customers in tax proceedings does not constitute the illegal practice of law by a bank. State Bar Association of Connecticut et al. v. Connecticut Bank & Trust Company & Hartford National Bank and Trust Company, Superior Court of Connecticut, April 15, 1957. 74 B.L.J. 848.

§ 132. Merger and consolidation.

New York General Corporation Law, Sec. 20, which provides that challenged proxies must make and file an oath before they may be permitted to vote does not apply to shares of a national bank even though the federal statutes are silent on the subject of challenged proxies. Nugent v. Mooney, Superintendent of Banks, 155 N.Y.S.2d 611. 74 B.L.J. 225.

BANKRUPTCY

§ 139. Setting aside of adjudication in bankruptcy.

A bankrupt may be discharged under Section 14, sub. c(3) of the Bankruptcy Act even though he did not disclose a law suit pending against him on a promissory note when applying for various bank loans where the intent of the bankrupt to defraud was not clearly established. Becker v. Shields, United States Court of Appeals, Eighth Circuit, 237 F.2d 622. 74 B.L.J. 678.

§ 142. Preferences within four months of bankruptcy.

Executing a chattel mortgage to the

holder of notes on which the mortgagors had defaulted, within four months of the mortgagors' bankruptcy, does not constitute a voidable preference where the mortgagee did not have the knowledge of the mortgagors' insolvency at the time the mortgage was executed. DeSanto v. Noto Lumber Co., United States District Court, Middle District of Pennsylvania, September 9, 1957. 74 B.L.J. 1071.

Repayment of bank loan constitutes voidable preference where payment was made within four months of bankruptcy and bank had reason to believe borrower was insolvent because it knew of borrower's under-capitalization, delay in paying overdrafts and failure to use checking account in bank. Gelbman, Trustee in Bankruptcy v. Canton National Bank, Ohio, 150 F.Supp. 804. 74 B.L.J. 946.

BONDS

§ 209. Rights of parties—lost or stolen bonds.

Where HOLC bearer bonds were stolen from Bank A and presented for payment at Bank B, which forwarded them to the Federal Reserve Bank for payment, and Bank A brought suit for the value of the bonds against Bank B, the Federal Reserve Bank and the payees, the United States Supreme Court ruled that matters of good faith and burden of proof should be decided with respect to state law and that the maturity of the bonds should be determined by federal law. Bank of America National Trust and Savings Association v. Parnell, United States Supreme Court, November 13, 1956. 74 B.L.J. 110.

§ 214.2. Rights of co-owner of bonds.

Where debentures of a bank were owned by decedent or his son "either one or the survivor," they were held in joint tenancy since the intention of the parties was clearly expressed in the written instruments and could not be varied by parol evidence. Estate of John Miller, Iowa, 79 N.W.2d 315. 74 B.L.J. 662.

BRANCH BANKING

§ 215. Bank as separate entity.

Where a national bank had a branch bank in one city it could not establish another branch in that city because Michigan Financial Institutions Act, Section 34 is to be construed to mean that a branch can be established only in the city where the main office of the bank is located. Michigan National Bank, Lansing, Michigan v. Gidney, United States Court of Appeals, 237 F.2d 762. 74 B.L.J. 513.

CERTIFICATES OF DEPOSIT

§ 232. Payment of certificate.

Certificates of deposit payable to the depositor or "payable on her death" to a named person were valid contracts that embodied the intent of the depositor to have the proceeds of the certificates go to that person who could enforce the contracts after the depositor's death as a third party beneficiary under Tennessee law. People's Bank v. Baxter, et al., Tennessee, 298 S.W.2d 732. 74 B.L.J. 667.

CHECKS

§ 277. Cashier's checks.

In Ohio a money order may not be used as a candidate's deposit in place of a certified check as called for in the statute because the two instruments are materially different. A certified check lets the payee rely on the credit of the bank and the maker whereas the money order gives the payee recourse only against the bank. State ex rel. Babcock v. Perkins et al. Ohio, 134 N.E.2d 839. 74 B.L.J. 144.

COLLECTIONS

§ 297. Duties of collecting bank; liability for negligence generally.

A drawee bank was not liable to a collecting bank for negligence where the drawee returned an unpaid check to the forwarding bank by mail instead of wiring the forwarding bank as indicated in its instructions. The drawee did not discover the check was uncollectible until after banking hours and the forwarding bank received the check back as soon as it would have received a telegram. Scottsbluff National Bank v. First State Bank, Nebraska, 76 N.W.2d 445. 74 B.L.J. 115.

A collecting bank was liable for only nominal damages plus the plaintiff's costs of bringing suit where the bank was negligent in overlooking a request to obtain an endorsement on a trade acceptance since the plaintiff knew that the purchaser had never agreed to make the endorsement and since no endorsers were released by the delay in protesting nonpayment. Balsa Ecuador Lumber Corp. v. Security National Bank, North Carolina, 141 F.Supp. 470. 74 B.L.J. 316.

§ 329. Title of collecting bank.

The deposit of a check, draft or other commercial paper in the ordinary course of business, whereby the depositor receives a credit as cash against which he may draw, prima facie operates to transfer the title to the bank, in the absence of a usuage or custom, or of an agreement that the effect of the transaction shall be otherwise, or proof of circumstances from which such an agreement may be inferred. Badler v. L. Gillarde Sons Company & South Philadelphia National Bank, Pennsylvania, 127 A.2d 680. 74 B.L.J. 578.

A bank became the owner of checks sent for collection because this was clearly the intention of the bank and its depositor despite the fact that a provision in the deposit slip stated that the bank acted only as agent of the depositor. First National Bank of Auburn v. Lowrance Motor Company, United States Court of Appeals, 238 F.2d 625. 74 B.L.J. 582.

Under a collection contract which stated that the bank acted only as depositor's collection agent and that all items were credited subject to final payment, a bank is not the purchaser of a draft sent for collection but rather is only an agent of the depositor. Agricultural Insurance Company of Watertown, New York v. Andrade & Fall River Trust Company, Massachusetts, 146 F.Supp. 893. 74 B.L.J. 798.

DEEDS

§ 382.5. Deeds of trust.

A deed of trust was not invalid because of an inadequate description of cattle covered by the deed where the cattle were described by breed, number, color and weight. Crosby v. Loudoun National Bank of Leesburg, United States Court of Appeals, July 13, 1956. 74 B.L.J. 69.

DEPOSITS

§ 390. Relation between bank and depositor.

The collection of an item is completed when the bank from whom the collection is being made credits the item to the collecting bank's account and the death of the depositor between this time and the time the sum was entered on the collecting bank's ledger did not effect the actual time of collection. Duggan v. Hopkins, California, 804 P.2d 823. 74 B.L.J. 508.

§ 412. Deposits by corporate officials and other agents.

Where a depositor's employee received cash from a bank in various deposit transactions and the cash was added to the depositor's cash fund the depositor sustained no loss and therefore could not sustain a damage suit against the bank for the wrongful payment of funds. N. O. Nelson Co. v. Deposit Guaranty Bank & Trust Co., Miss., 89 So.2d 854. 74 B.L.J. 571.

§ 429.1.—Indiana.

A bank was liable to one joint depositor for paying out funds held in a joint savings account to the other depositor who did not produce the passbook which was required under the provision in the passbook and the rules of the bank, despite the existence of a state statute which indicated the receipt of a depositor was sufficient to protect a bank. Badders v. Peoples Trust Co., Indiana, 140 N.E.2d 235. 74 B.L.J. 768.

DISCOUNT

§ 472.1. Right to discount commercial paper.

Where notes were sold to a factor which charged the seller interest of 6% plus a "discount charge" deducted in advance, the transaction does not avoid the restrictions of Section 131 N.Y. Banking Law which indicates that all notes discounted by an organization other than a bank are void. Miller v. Discount Factors, Inc., 1 N.Y.2d 275. 74 B.L.J. 212.

EXECUTORS, ADMINISTRATORS AND TRUSTEES

§ 486. Foreign corporation as executor.

A non-resident bank or trust company cannot qualify to administer real property in New York unless an equal privilege is granted to New York institutions in the non-resident's state. Smith's Estate, Application of Kanawha Banking and Trust Co., 153 N.Y.S.2d 110. 74 B.L.J. 45.

FEDERAL DEPOSIT INSURANCE CORPORATION

§ 538.1. F.D.I.C. as receiver of closed bank.

A federal district court will approve a contract of sale of assets of a bank submitted to it by the F.D.I.C., an act which the court is given jurisdiction to do under 12 U.S.C. 192. In the Matter of the Receivership of Home National Bank of Ellenville, N.Y. 147 F.Supp. 389. 74 B.L.J. 780.

FEDERAL RESERVE BANKS

§ 539.1. Powers of Federal Reserve Board.

The Board of Governors of the Federal Reserve System is legally empowered to conduct a hearing in respect to the capital adequacy of a state member bank of the Federal Reserve System under Section 325, United States Code, Title 12. Continental Bank & Trust Company of Salt Lake City, Utah v. Woodall, United States Court of Appeals, 239 F.2d. 707. 74 B.L.J. 688.

FORGED PAPER

§ 549. Forged paper in general.

A bank which had guaranteed prior endorsements on U. S. Treasury checks that had inadvertently been sent to the wrong person and negotiated by him could invoke the "Impostor rule" when sued by the government. This rule is that a drawer having made payable and delivered an instrument to an impostor whom the drawer believes to be the person whose name he has assumed and who is the very person intended by the drawer to present and indorse the instrument, must, as against a holder in due course, bear the loss where the impostor obtained payment or negotiated the instrument. United States v. Union Trust Company, Maryland, 139 F.Supp. 819. 74 B.L.J. 297.

A check signed by the one purporting to have executed it is not a forgery under California law and a bank suffering from a loss caused by such signing cannot recover under the forgery provision of a bankers' blanket indemnity bond. Torrance National Bank v. Aetna Casualty & Surety Company, California, 150 F.Supp. 638. 74 B.L.J. 965.

A bank could collect under an indemnity bond covering forgery where the bank loaned money, and subsequently was unable to recover the loan, on the basis of an assignment of non-existent accounts receivable which the president of the borrowing company had counterfeited. Security National Bank of Durand v. Fidelity & Casualty Company of New York, Wisconsin, 145 F.Supp. 667. 74 B.L.J. 588.

§ 552. Drawee may not recover money paid on check bearing forged signature.

If the equities between the parties are the same, the drawee of a forged check must bear the loss as between it and the collecting bank because the drawee is bound to know the signature of its own depositor. American Surety Company v. Manufacturers Trust Company, 154 N.Y. Supp.2d 260. 74 B.L.J. 140.

§ 578.—Depositor's duty to give notice upon discovering forged indorsement.

A bank does not waive its rights under the Texas statute which requires that claims against banks based on forged checks be made in writing within one year from the time such checks are paid, where the bank returned the forged checks to the maker and received a receipt from him for the checks. Stauffer v. Frost National Bank, Texas, 291 S.W.2d 743. 74 B.L.J. 306.

GUARANTY

§ 616. Construction of contract of guaranty.

Despite an allegation that a certain guarantee was a floor plan guarantee which could not be availed of by a bank because the floor plan was never carried out, a court ruled that the guarantee was an open guarantee so that it made no difference that there had been no floor plan. McGhee v. Wynnewood State Bank, Texas, 297 S.W.2d 876. 74 B.L.J. 788.

HOLDERS IN DUE COURSE

§ 639. Holder must take in good faith.

Where a person takes a note in good faith for consideration and without knowledge of any infirmity, he becomes a holder in due course and will prevail over the makers even though after taking the note there is a failure of consideration. Tucker v. Meredith, United States Court of Appeals, 232 F.2d 347. 74 B.L.J. 36.

HOME OWNERS LOAN CORPORATION

§ 661. Decisions involving act.

State and national banks are not protected from competition by building and loan associations under the Home Owners' Loan Act (12 U.S. Code § 1464 e). Union National Bank of Clarksburg et al. v. Home Loan Bank Board et al., United States Court of Appeals, 233 F.2d 695. 74 B.L.J. 334.

INSURANCE

§ 712. Liability on policies in general.

Under a policy of liability insurance in which the insurance company contracts to defend actions against its insured, the

obligation to defend arises when a petition is filed against the company's insured pleading an action within the coverage of the policy. This obligation exists regardless of the insurer's ultimate liability to the insured. First National Bank of Akron v. Ohio Casualty Insurance Co., Ohio, 137 N.E.2d 770. 74 B.L.J. 315.

JUDGMENTS

§ 762. Judgments.

Makers of a note were entitled to have judgment by confession on a note vacated where the note had been signed and delivered to the payee's agent in one county and the judgment had been entered in another county. Investors Commercial Corporation v. Metcalf, Illinois, 140 N.E.2d 924. 74 B.L.J. 801.

A default judgment for the balance due under a conditional sale contract could be reopened for the purpose of judicially determining the fair value of the property where it was shown that the property had been sold after repossession for $650 when it was probably worth $1500. Maryland Credit Finance Corp. v. Reeves, New Jersey Superior Court, May 23, 1957. 74 B.L.J. 1070.

LIEN AND SET-OFF

§ 771. Lien and set-off in general.

Where bank participated in a plan to liquidate insolvent company's inventory, it waived its right to set off against company's account for balance due on a loan when the company became bankrupt. First National Bank of Portland v. Dudley, United States Court of Appeals, 231 F.2d 396. 74 B.L.J. 21.

§ 792. Special deposits.

Where payee of check takes action to terminate illegally the business of the payor, it has no right to have a court of equity impress a trust on funds in payor's bank account against which the bank has charged off a debt owed to it by the payor despite the promise of a bank officer to honor the check in favor of the payee. White Truck Sales v. Citizens Commercial & Savings Bank, Michigan, 82 N.W.2d 518. 74 B.L.J. 1055.

General Liens

§ 821.1. Liens in general.

The assignee of a conditional sale contract is not entitled to recover the property sold under the contract where such property had been transferred by a garageman who had a valid mechanic's lien on the property. Such a lien is assignable and is not vitiated by assignment. Dealer Plan Corp. v. Automotive Wholesalers, Inc., New York Supreme Court, May, 1957. 74 B.L.J. 1070.

§ 821.2. Priority of liens.

Where a mortgagor violated the Bulk Sales Law in transferring certain mortgaged chattels to a purchase money mortgagee, the mortgage although prior in time to liens of the mortgagor's creditors, did not have priority over such liens. Ritchie Grocer Company v. Sanders, Arkansas Supreme Court, October 15, 1956. 74 B.L.J. 250.

Where the statutes are silent on the subject of the priorities of repairmen's liens and mortgage liens and where the equities of a particular situation favor a repairman, the court gave priority to the repairman's lien despite the fact that the mortgages were evidenced on the certificates of title. Blackard v. City National Bank, United States District Court, August 10, 1956. 74 B.L.J. 252.

Even though the statutes give a repairman an absolute lien on the product of his labor, the vendor of an automobile sold under a title retention contract has a lien prior to a repairman for the unpaid balance of the purchase price. Goff-McNair Motor Company v. Phillips Motor Company, Arkansas Supreme Court, October 8, 1956. 74 B.L.J. 252.

A statute giving a landord's lien for rent for up to six months, priority over a prior mortgage lien is not unconstitutional because a mortgagee can protect himself from having the lien arise by requiring the tenant to provide the landlord with rent receipts. Gibraltar Factors Corporation v. Siapo, New Jersey Superior Court, September 5, 1956. 74 B.L.J. 164.

§ 821.3. Effect of filing.

The Arkansas Uniform Motor Vehicle Certificate of Title 1 Act which requires that all liens on motor vehicles be recorded under a provision of the Act includes only contractual liens and not involuntary liens such as tax liens which are properly put on the general records of the state. Union Planters National Bank v. Godwin, United States District Court, Arkansas, April 11, 1956. 74 B.L.J. 70.

LOAN AND DISCOUNT

§ 823. Excessive loans.

A mortgagee bank could foreclose a temporary mortgage even though the

mortgagor claimed the bank had violated its contract to lend the mortgagor $40,000 and keep him employed in the bank so he could pay off the mortgage, because such a contract violated the 10% loan limit on national banks set forth in 84 U.S. Code, Title 12. Jaynes v. First National Bank of Ketchikan, Alaska, United States Court of Appeals, 236 F.2d 258. 74 B.L.J. 400.

§ 824. Loan to an officer.

A loan by a bank to a partnership of which one of the bank's officers was a member did not violate a state statute requiring that no officer of a state bank could use the bank's funds except for the regular transaction of business and that no loans could be made without express approval of the bank's board, since under Iowa law a partnership is an entity distinct from its members. State v. Haesmeyer, Iowa, 79 N.W.2d 755. 74 B.L.J. 774.

§ 825. False credit statement.

Despite the holding of the Fourth Circuit Court of Appeals in the case of United States v. McNinch, the Court of Appeals in the Eighth Circuit held that false claims submitted to the Commodity Credit Corporation are covered by the Federal False Claims Act. United States v. Rainwater, United States Court of Appeals, 244 F.2d 27. 74 B.L.J. 1060.

The Federal False Claims Act does not apply to persons who make false representations to obtain F.H.A. guaranties or cotton loans from the Commodity Credit Corporation because the Act does not include penalties for false claims against government corporations. United States v. McNinch, Toepleman v. United States and Cato Bros., Inc. v. United States, United States Court of Appeals, Fourth Circuit, February 28, 1957. 74 B.L.J. 415.

LOST PROPERTY

§ 829. Title of finder.

A bank has paramount custody of money until the true owner is found or otherwise indefinitely, where a bank employee found an envelope containing the money on the floor of the safe deposit vault. The law of finders did not apply because a safe deposit vault is not considered a private place. Dennis v. Northwestern National Bank, Minnesota, 81 N.W.2d 254. 74 B.L.J. 783.

MAKER

§ 832.—Joint makers.

Where two persons sign a note apparently as joint principals and there is nothing on the face of the note to indicate that one is principal and the other is surety, there is a rebuttable presumption that both persons signed as principals. United States v. Frost, Georgia, 149 F. Supp. 386. 74 B.L.J. 968.

MORTGAGES

§ 862. Chattel mortgages generally.

A mortgagor cannot accept the benefits of a mortgage and then repudiate it in a foreclosure proceeding on the ground that it would unjustly enrich the mortgagor, even though the mortgage was outside the proper scope of activity of the mortgagee. Washington Heights Federal Savings & Loan Association v. Brooklyn Fur Storage Corp., New York Supreme Court, March 25, 1957. 74 B.L.J. 902.

A third mortgagee was subrogated to the rights of the first mortgagee where the second mortgage was not recorded and where the first mortgagee had agreed at the time the third mortgage was made, that the third mortgage would be the first lien on the property. United States v. Gregory Beaumont Equipment Company, United States Court of Appeals, Eighth Circuit, May 3, 1957. 74 B.L.J. 903.

A vehicle was mortgaged in Oregon where an affidavit of good faith is not required, and then removed to Washington without the mortgagee's consent when it was attached by a creditor of the mortgagor, a court ruled that the Oregon mortgagee would prevail over the creditor because the mortgage was a valid prior lien despite the fact that an affidavit of good faith was required when executing a mortgage in Washington. Isaacs v. Mack Motor Truck Corp., Washington Supreme Court, June 5, 1957. 74 B.L.J. 904.

A mortgagee was not entitled to have a receiver appointed to take possession of mortgaged property without first giving notice to the mortgagor unless the property was in danger of being lost, removed or materially injured. Morris v. North Fort Worth State Bank, Texas Court of Civil Appeals, March 22, 1957. 74 B.L.J. 991.

The lien of a chattel mortgage executed before the assessment of federal taxes is prior to the tax lien because such mortgage liens are preserved by Section 6323 of the Internal Revenue Code of 1954. The chattel mortgage lien was not prior to city taxes however. Exchange Bank & Trust Co. v. Tubbs Manufacturing Co., United States Circuit Court of Appeals, June 29, 1957. 74 B.L.J. 1069.

The rights of a mortgagee to assets of a mortgagor are superior to the rights of a

judgment creditor of the mortgagor where the creditor did not get an execution on the assets until after the default on the mortgage. In the Matter of Ideal Mercantile Corporation, United States District Court, New York, July 24, 1956. 74 B.L.J. 69.

A mortgage was invalid as to subsequent creditors since it had not been recorded, even though it was asserted that the recording statute did not apply because the property was in the possession of the mortgagor's tenant farmer. Dorcas v. Hamiel, Iowa Supreme Court, September 18, 1956. 74 B.L.J. 70.

Where a mortgagor purchased property under an agreement which required that the mortgagor maintain the property until the purchase price was paid, a court ruled that this was a retention of title contract and that it gave the seller a lien on the property prior to the lien of the mortgagee who had knowledge of the contract. Shepherd v. Holbrook, Utah Supreme Court, December 17, 1956. 74 B.L.J. 436.

A chattel mortgage was invalid against a mortgagor's trustee in bankruptcy because the mortgagee had failed to notify one of the mortgagor's creditors as required under the Michigan Bulk Mortgage Act, Section 442.51. In the Matter of William S. Riley, United States District Court, Eastern District of Michigan, October 31, 1956. 74 B.L.J. 532.

A mortgagee was liable for malicious prosecution where it knew testimony about a husband was false in a previous suit against the husband and wife on a note which the husband had not signed, despite the fact that in the earlier suit the mortgagee had won a judgment by default. Mannisto v. Rainen Furniture Company, Kansas City, Missouri, City Court of Appeals, October 1, 1956. 74 B.L.J. 164.

A mortgagee having a mortgage on tractor tires could recover against a mortgagee having a mortgage on the tractor for conversion of the tires when the latter mortgagee repossessed the tractor since the tires were intended to remain as separate property and were easily detachable. Rabtoay General Tire Company v. Colorado Kenworth Corporation, Colorado Supreme Court, March 25, 1957. 74 B.L.J. 698.

§ 863. Acknowledgment and execution.

A mortgagee does not have a position superior to general creditors where the mortgages do not contain proper acknowledgments since creditors looking at the record could not tell whether or not the officers of the corporate mortgagor had authority to execute the mortgages. Jordan v. Securities Corp., Idaho Supreme Court, July 26, 1957. 74 B.L.J. 990.

§ 865. Necessity for filing.

A mortgagee has no right to recover property improperly sold by a mortgagor when the purchaser from the mortgagor has no notice of the mortgage which was not recorded. Bank of Ashippun v. Ellis, Supreme Court of Wisconsin, January 7, 1957. 74 B.L.J. 435.

§ 869. Time of filing.

A mortgage executed and put in escrow on February 4th but not delivered until February 20th at which time it was recorded, was not a complete contract until the latter date and consequently was recorded in a timely manner. Chichester v. Union Bank & Trust Co. of Los Angeles, United States Court of Appeals, Ninth Circuit, January 15, 1957. 74 B.L.J. 531.

§ 870. Place of filing.

A North Carolina statute requires that mortgages given by a corporation in that state be recorded in the county where the corporation's principal place of business is actually located, not in the principal place of business as stated in the certificate of incorporation. Haworth v. General Motors Acceptance Corp., United States Court of Appeals, Fourth Circuit, November 1, 1956. 74 B.L.J. 530.

§ 872. Sufficiency of filing.

Chattel mortgages which are otherwise properly filed do not constitute constructive notice to subsequent mortgagees when they do not contain the first mortgagee's address. United States v. The Suring State Bank; United States District Court, Wisconsin, 150 F.Supp. 60. 74 B.L.J. 989.

§ 873. Description of mortgaged property.

A description of mortgaged cattle containing the number, breed, ages of the cattle, name of the owner and the farm and its location was held adequate to put third parties on notice of the existence of the mortgage. Highland Park State Bank v. Continental National Bank, Texas Court of Civil Appeals, March 15, 1957. 74 B.L.J. 699.

§ 874. Validity of chattel mortgage.

Under an Alaska statute a chattel mortgage on after-acquired property was valid against a mortgagor's trustee in bankruptcy since the statute required only that the property come into the possession or control of the mortgagor for it to be included as security under the mortgage. In the Matter of Hayes, District Court of Alaska, April 30, 1956. 74 B.L.J. 251.

§ 884. Sale of mortgaged property.

In Louisiana a mortgagee is not entitled to a deficiency judgment where he provokes a public sale of the mortgaged prop-

erty unless he has the property appraised before the sale. David Investment Co. v. Wright, Louisana Court of Appeal, June 29, 1956. 74 B.L.J. 435.

A mortgagor who had sold mortgaged property without written notice to the mortgagee as required in a criminal statute, could not be convicted under the statute because an agent of the mortgagee had orally agreed to the sale. People of the State of California v. Farmer, Supreme Court of California, December 1, 1956. 74 B.L.J. 436.

NEGLIGENCE

§ 930. Liability for negligence.

A depositor could receive at least nominal damages from a bank where the bank returned a check and inadvertantly marked it "short according to our books" when, in fact, the depositor had placed a stop order against the check. It made no difference that the account did not contain sufficient funds at the time the check was returned. Robbins v. Bankers Trust Company as successor to Public National Bank & Trust Company, 157 N.Y.S.2d 56. 74 B.L.J. 574.

A depository bank was liable to a depositor for wrongly telling the depositor that a deposit had been received for its account when in fact no such deposit had been received. The bank was liable for damages suffered by reason of its negligent use of language. DeAtucha v. Manufacturers Trust Company, 155 N.Y.S.2d 537. 74 B.L.J. 206.

NEGOTIABILITY

§ 936. Stipulations in general not affecting negotiability.

The transferor of a negotiable promissory note was entitled to have the endorsement of the transferee even though the note is attached to a contract, certain aspects of which made the note appear to be non-negotiable. Certified Motors, Inc. v. Nolan Loan Co., Washington, D. C., 122 A.2d 227. 74 B.L.J. 47.

NOTARIES

§ 979. Function of acknowledgment.

The assignee of a conditional seller of a car could not recover against a bona fide purchaser who had bought the car from the conditional buyer where the contract of sale had not been properly acknowledged. Budget Plan, Inc. v. Sterling A. Orr, Inc., Massachusetts Supreme Judicial Court, November 2, 1956. 74 B.L.J. 348.

OFFICERS AND EMPLOYEES OF BANKS

§ 1067. Liability of officers in general.

The Banking Board of Pennsylvania acted regularly and within its jurisdiction when it removed a person from his position as president and director of a bank for "abuse of his position", such action being permitted under Pennsylvania statute Sec. 501, subd. B of the Banking Code. Swank v. Myers, Secretary of Banking, et al., Pennsylvania, 126 A.2d 267. 74 B.L.J. 310.

§ 1077. Liability of bank for acts of officers or employees.

In a malicious prosecution case, a jury could rightly have found that a bank manager had not acted in good faith and that the lack of good faith was imputed to the bank where the manager had not appraised the bank's attorney of all pertinent facts when asking his advice about having a depositor's wife arrested. Fry v. Bank of America National Trust and Savings Association, California, 298 P.2d 34. 74 B.L.J. 123.

§ 1108. Election and qualification of bank directors.

Prior notice to the stockholders of a national bank concerning a resolution reducing the size of the board of directors is not necessary since such action is not considered to be unusual or extraordinary business. Josephson v. First National Bank of Bordentown, New Jersey, 127 A.2d 210. 74 B.L.J. 683.

§ 1133. False entries by national bank officers.

A bank cashier who for fraudulent purposes had checks entered as cash items when the bank examiners were examining the bank was guilty of making false entries under Section 1005, U.S.C., Title 18. Meredith v. United States, United States Court of Appeals, 238 F.2d 535. 74 B.L.J. 757.

PAYMENT

§ 1210.—Liability of drawee.

Checks drawn in Massachusetts made payable to a fictitious payee and delivered

in Maryland to an agent of the drawer are governed by Maryland law and are therefore not bearer instruments. John Hancock Mutual Life Insurance Co. v. Fidelity-Baltimore National Bank & Trust Co., etc., Maryland, 129 A.2d 815. 74 B.L.J. 871.

§ 1216. Discharge of instrument.

A note cannot be discharged under New Jersey Negotiable Instruments Law except by a cancellation in writing or by a delivery of the note to the maker. A verbal cancellation without consideration is not sufficient to discharge a note. Estate of Kirschenbaum, New Jersey, 130 A.2d 640. 74 B.L.J. 858.

§ 1223. Payment of checks.

A bank is not liable when in good faith and without actual knowledge of the bankruptcy, it honors a bankrupt's checks in the regular course of its business. Rosenthal v. Guaranty Bank & Trust Co. of Lafayette, Louisiana, 139 F.Supp. 730. 74 B.L.J. 333.

§ 1245. Bank's liability for refusing depositor's check.

Where bank is sued for refusing to pay check because it wrongly believes the account contains insufficient funds, the bank is entitled to plead as partial defenses that the mistake was inadvertent, that the checks were paid on re-presentation although it may not plead the partial defenses that impairment of credit was because of other checks which were rightly returned for insufficient funds, nor that the depositor had not informed the bank of the alleged impairment before bringing suit. Bonzales v. Colonial Trust Company, 162 N.Y.S.2d 754. 74 B.L.J. 1066.

SALES

§ 1357. Contracts of sale.

A seller under an unrecorded retention of title contract was not entitled to foreclose on the property where such foreclosure was opposed by the holder of a bill of sale covering the property which had been executed by the purchaser, even though the holder of the bill of sale became entitled to the property by virtue of the after acquired property clause in the bill of sale. Jewelers Investment Company, v. Elliott Addressing Machine Co., Georgia, 97 S.E.2d 548. 74 B.L.J. 990.

§ 1357.5. Conditional sales contracts.

Conditionally sold property installed in a building covered by a deed of trust does not become a fixture where the parties to the transaction intended that it should remain as personal property and where it could be removed without damage to the building. Grupp v. Margolis, California District Court of Appeal, September 3, 1957. 74 B.L.J. 1070.

Since a conditional sale contract is unilateral, that is, it states only the conditions and obligations of the buyer, it is a complete contract without the seller's signature or acknowledgment. Second National Bank v. Montesi, Connecticut Supreme Court of Errors, March 26, 1957. 74 B.L.J. 699.

A conditional seller is entitled to repossess and remove a prefabricated building where it was evident from the conditional sale contract the building was intended to remain as personal property and where it could be removed without damage. Royal Store Fixture Co. v. Patten, Pennsylvania Superior Court, March 20, 1957. 74 B.L.J. 697.

The purchaser under a title retention contract was not liable for conversion of property by continuing to assume the right of ownership over the property after default on the contract where the holder of the contract had made no demand for the property after the default. Colonial Credit Company v. Williams, Georgia Court of Appeals, February 5, 1957. 74 B.L.J. 613.

A purchaser under a conditional sale contract was not entitled to punitive damages from an assignee of the contract for using false representations to effect repossession of the property where the purchaser was unable to prove malice, fraud, oppression of wilful wrong on the part of the assignee. Bradley v. Association Discount Corp., Mississippi Supreme Court, February 11, 1957. 74 B.L.J. 612.

A conditional buyer was refused an order to stop a repossession sale even though the buyer tendered certain payments to the original seller where the buyer had, in violation of the contract, sold the property without notice to the original seller. Ferguson v. Franklin National Bank, New York Supreme Court, November 19, 1956. 74 B.L.J. 349.

Under the New Hampshire version of the Uniform Conditional Sales Act, a conditional seller has the right to recover any losses regardless of whether or not a resale was held, in cases where less than half of the purchase price was paid, provided no statutory resale had been demanded by the purchaser and provided there had been no rescission of the contract as permitted by the Act. Randall v. Pingree, New Hampshire Supreme Court, October 3, 1956. 74 B.L.J. 165.

Where goods were sold under a conditional sale contract in Missouri and the

contract was not recorded in that state, then they were taken to Illinois and mortgaged, the mortgagee could prevail over the conditional seller in Missouri because the contract had not been properly recorded, Harrison v. State Bank of Hull, Illinois Appellate Court, Third District, October 16, 1956. 74 B.L.J. 348.

§ 1357.6. Title retention contracts.

An unforeclosed retention of title contract does not have a claim on general funds in court for distribution superior to two foreclosed liens on which executions had been issued. General Finance & Thrift Corporation v. Bank of Wrightsville, Georgia, 90 S.E.2d 93. 74 B.L.J. 68.

§ 1358. Bulk sales law.

Where a mortgagor violated the Bulk Sales Law in transferring certain mortgaged chattels to a purchase money mortgagee, the mortgage although prior in time to liens of the mortgagor's creditors, did not have priority over such liens. Ritchie Grocer Company v. Sanders, Arkansas Supreme Court, October 15, 1956. 74 B.L.J. 250.

SAVINGS BANKS

§ 1364. Savings bank held not liable in such cases.

An exculpatory provision in a passbook exonerating a savings and loan association from liability for paying funds out of an account to a person unlawfully presenting the passbook constitutes part of the contract between the depositors and the bank despite the fact that the provision was not contained in the signature cards and was not brought to the attention of the depositors. Polonsky v. Union Federal Savings & Loan Association, Mass. 138 N.E.2d 115. 74 B.L.J. 567.

STATUTE OF LIMITATIONS

§ 1385. Statute begins to run at maturity of certificate.

A certificate of deposit made payable on the return of the certificate properly endorsed at a specified or determinable future time after date is a time certificate and the statute of limitations begins to run thereon at the expiration of such time without the necessity of any demand for payment. Powell, Administrator v. Farmers State Bank, Nebraska, 82 N.W.2d 260. 74 B.L.J. 1044.

STOCK AND STOCKHOLDERS

§ 1419. Transfer and sale of stock.

Certain lost security indemnity bond forms contained in pamphlets explaining a protection plan to banks were not copyrightable because the novelty of the arrangement was the key concept of the plan and plans and ideas fall outside the copyright laws. Continental Casualty Co. v. Beardsley, United States District Court, Southern District of New York, April 4, 1957. 74 B.L.J. 480.

STOPPING PAYMENT

§ 1474. Liability of bank paying stopped check.

A release provision freeing a bank from liability for inadvertent payment of a check on which a stop payment order has been given, is invalid in Alabama for lack of consideration. Commercial Bank v. Hall et al., Alabama, 94 So.2d 198. 74 B.L.J. 879.

TRUST RECEIPTS

§ 1562. Trust receipts.

A finance company need not deduct the amount due under a note from the reserve fund set up under a floor plan agreement where the reserve had been established for the sole purpose of protecting the finance company against time payment contract losses. King v. Manufacturers Acceptance Corporation, Georgia Court of Appeals, January 22, 1957. 74 B.L.J. 806.

A bank as entrustee lost its rights in a trust receipt transaction because it failed to make certain inquiries concerning the subject property when making extensions to the trustee. McClosky v. J. Henry Schroder Banking Corporation, New York Supreme Court, New York County, May 22, 1957. 74 B.L.J. 807.

A person converting proceeds of sale of a trailer covered by a trust receipt can be convicted under a statute making embezzlement by a bailee a crime since the trust receipt transaction did involve a bailment. United States v. Maulding, United States District Court for the District of Alaska, December 17, 1956. 74 B.L.J. 807.

USURY

§ 1564. What constitutes usury.

Although in a conditional sales contract,

the transaction between the seller and purchaser of a car was separate from the discount of the contract to the bank, the transactions were connected so that the bank was not an innocent purchaser. There was no real time price involved, but only a sale for cash, plus a loan which should have put the bank on inquiring about the possibility of usury. Daniel and Dillard v. First National Bank of Birmingham, United States Court of Appeals, 228 F.2d 803. 74 B.L.J. 131.

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